
NORTH AYRSHIRE COUNCIL

4th September 2019

Planning Committee

Locality	Irvine
Reference	19/00532/PP
Application Registered	12th July 2019
Decision Due	12th September 2019
Ward	Irvine South

Recommendation	Approved with no Conditions
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Location	Homebase Ltd 6 Riverway Riverway Retail Park Irvine Ayrshire KA12 8HZ
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Applicant	TJ Morris Ltd
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Proposal	Application under Section 42 of the Town and Country Planning (Scotland) Act 1997 to remove condition 2 of planning permission 01/97/0133 to enable the sale of all types of retail goods
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1. Description

Planning permission is sought for non-compliance with condition 2 attached to planning permission 01/97/0133 in order to enable a retailer (Home Bargains) to move into the larger unit currently occupied by Homebase. The current size of Home Bargains is 929 square metres gross (743 sq.m net) whereas the Homebase unit is much larger at 2924 square metres gross (2615 sq.m net plus external garden centre). Home Bargains is within the original part of the retail park, granted planning permission in 1988 and developed around 1990. Homebase is within the second phase, granted planning permission in 1997 and built in 1998. The 1997 planning permission has a condition which states as follows:

"That Units 1 - 8 shall be occupied by businesses selling comparison goods only."

The reason given for the above condition was "to restrict the development to the terms of its justification/special need."

Condition 2 therefore excludes the sale of convenience goods from the second phase of the retail park, with the exception of the Tesco superstore. (Convenience goods include food and drink as well as non-food items such as toiletries and other domestic items typically purchased on a regular basis). As well as the Homebase unit, this restriction also applies to the other units which were granted as part of the permission. The current tenants in the other units granted by the 1997 permission include Currys PC World (adjacent to Homebase) as well as the parade of shops which adjoin Tesco, currently occupied by Pets at Home, Poundworld and Poundstretcher.

The applicant advises that Home Bargains trade with approximately 60% convenience goods and 40% comparison goods. Of this, 70% of sales are non-food, with 30% food sales. As such, they are seeking the removal of the condition to enable Home Bargains to occupy the Homebase unit, which would include the garden centre.

In 2018, planning permission (ref. 18/00655/PP) was granted to remove the convenience goods restriction which applied to the first phase of Riverway Retail Park, given that over thirty years had elapsed since outline planning permission was granted for the development. This relaxation applies to all units in the first phase. It is now proposed that the restriction on convenience goods which was imposed on the second phase of development is lifted.

Over time, Riverway Retail Park has grown and evolved significantly since it was first developed. It offers a diverse range of comparison goods including clothing, sportswear, DIY and gardening products, electrical and electronic goods as well as food and non-food convenience goods. The park also offers a range of restaurants and eating places. Notably, several of the units beside Tesco already sell food and non-food convenience goods, and have done so for many years.

A supporting statement has been provided by the applicant's agent, highlighting the rationale for the proposed change to the historic conditions in order to enable the relocation and expansion of Home Bargains, who would become an anchor tenant as a result of the development.

In terms of the adopted Local Development Plan (LDP), Riverway Retail Park is recognised as a commercial centre for comparison goods retailing. The relevant LDP policies are TC 3 and the General Policy.

Relevant Development Plan Policies

TC3

POLICY TC 3: COMMERCIAL CENTRES

Uses in the allocated Commercial Centres will be restricted as follows:

- (a) Comparison goods, secondary convenience goods and ancillary other commercial development at Riverway Retail Park and Lamont Drive in accordance with the note below;
- (b) Comparison goods retailing at the East Road Retail Park, with commercial leisure uses also acceptable for expansion of the Retail Park; and,

(c) Bulky goods comparison retailing at Hawkhill, Stevenston.

For the avoidance of doubt proposals in accordance with the retail goods categories specified in this policy will also need to comply with Policy TC 4: Edge of Centre/Out of Centre Development. In the case of the Riverway Retail Park, this particularly applies to convenience retailing which should remain a secondary function to the primary function of the park as a comparison goods retail park, and to any other ancillary commercial development which may be considered appropriate. These uses are considered to be more likely to undermine the function and character of the town centre.

General Policy GENERAL POLICY

(a) Siting, Design and External Appearance:

- Siting of development should have regard to the relationship of the development to existing buildings and the visual effects of the development on the surrounding area and landscape.
- Design should have regard to existing townscape and consideration should be given to size, scale, form, massing, height, and density.
- External appearance should have regard to the locality in terms of style, fenestration, materials and colours.
- Development will require to incorporate the principles of 'Designing Streets' and 'Designing Places'.
- The particularly unique setting of North Ayrshire's rural, coastal, neighbourhood and town centre areas, and those with similar characteristics, necessitates that all development proposals reflect specific design principles unique to these areas. Coastal, Rural, Neighbourhood and Town Centre Design Guidance (four separate documents) are Supplementary Guidance to the Plan and contain further details.
- Consideration should be given to proper planning of the area and the avoidance of piecemeal and backland development.
- Design should have regard to the need to reduce carbon emissions within new buildings.

(b) Amenity:

Development should have regard to the character of the area in which it is located.

Regard should be given to the impact on amenity of:

- Lighting;
- Levels and effects of noise and vibration;
- Smell or fumes;
- Levels and effects of emissions including smoke, soot, ash, dust and grit or any other environmental pollution;
- Disturbance by reason of vehicular or pedestrian traffic.

Development should avoid significant adverse impact on biodiversity and upon natural heritage resources, including those outwith designated sites and within the wider countryside. Development proposals should further have regard to the preservation and planting of trees and hedgerows, and should also have regard to their potential to contribute to national and local green network objectives.

In relation to neighbouring properties regard should be taken of privacy, sunlight and

daylight.

(c) Landscape Character:

In the case of development on edge of settlement sites, substantial structure planting will generally be required to ensure an appropriate boundary between town and country is provided. Such proposals should include native tree planting, retain natural features where possible and make provision for future maintenance.

Development should seek to protect the landscape character from insensitive development and the Ayrshire Landscape Character Assessment shall be used to assist assessment of significant proposals.

(d) Access, Road Layout, Parking Provision:

Access on foot, by cycle, by public transport and other forms of transport should be an integral part of any significant development proposal. Development should have regard to North Ayrshire Council's Roads Development Guidelines and meet access, internal road layout and parking requirements.

(e) Safeguarding Zones:

Pipelines, airports and certain other sites have designated safeguarding areas associated with them where specific consultation is required in assessing planning applications. The objective is to ensure that no development takes place which is incompatible from a safety viewpoint. The need for consultation within Safeguarding Zones is identified when an application is submitted. Supporting Information Paper No. 7 provides further information on Safeguarding Zones.

(f) The Precautionary Principle

The precautionary principle may be adopted where there are good scientific, engineering, health or other grounds for judging that a development could cause significant irreversible damage to the environment, existing development or any proposed development, including the application itself.

g) Infrastructure and Developer Contributions

For development proposals which create a need for new or improved public services, facilities or infrastructure, and where it is proposed that planning permission be granted, the Council will seek from the developer a fair and reasonable contribution in cash or kind towards these additional costs or requirements. Developer contributions, where required, will be sought through planning conditions or, where this is not feasible, planning or other legal agreements where the tests in Circular 3/2012 are met. Other potential adverse impacts of any development proposal will normally be addressed by planning condition(s) but may also require a contribution secured by agreement.

This will emerge from assessment of the impact of development proposals upon:

- Education;
- Healthcare facilities;
- Transportation and Access;
- Infrastructure;
- Strategic landscaping; and,

- Play facilities.

Further to analysis of infrastructure, indicative requirements for housing land allocations are set out within the Action Programme. Developer contributions will be further established by Supplementary Guidance (timing, costs etc.).

In addition to the above, Mixed Use Employment Areas are identified within the LDP. These sites are allocated for a mix of uses, subject to an element of employment space creation or improvement being provided. This will be informed by a business plan and masterplan. In these specific cases, contributions to the above (and affordable housing requirements as set out in Section 5) will also be required.

h) 'Natura 2000' Sites

Any development likely to have an adverse effect on the integrity of a 'Natura 2000' site will only be approved if it can be demonstrated, by means of an 'appropriate assessment', that the integrity of the 'Natura 2000' site will not be significantly adversely affected.

i) Waste Management

Applications for development which constitutes "national" or "major" development under the terms of the Planning Etc. (Scotland) Act 2006 will require the preparation of a Site Waste Management Plan (SWMP), which will be secured by a condition of the planning consent.

2. Consultations and Representations

Neighbour notification was undertaken in accordance with statutory procedures. No representations were received. No consultations were required.

3. Analysis

Section 42 of the Town and Country Planning (Scotland) Act 1997 is a mechanism which allows for the submission of a planning application for the development of land without complying with condition(s) subject to which a previous permission was granted. Section 42 of the Act stipulates that in this type of application the "planning authority shall consider only the question of the conditions subject to which permission should be granted."

The main determining issue in this case is whether the proposed modifications would conflict with the relevant LDP policy and relevant criteria of the General policy.

Circular 4/1998 sets out the tests for planning conditions, as follows:

- Need for a Condition
- Relevance to Planning
- Relevance to the Development to be Permitted
- Ability to Enforce
- Precision
- Reasonableness

Policy TC 3 of the adopted Local Development Plan (LDP) restricts uses at Riverway Retail Park to comparison goods, secondary convenience goods and ancillary other commercial development.

The application proposes non-compliance with a condition attached to a grant of outline planning permission dating from 1997, some 22 years ago. It is noted that LDP Policy TC 3 supports the use of the retail park at Riverway for both comparison and convenience goods, which is consistent with the long established pattern of use at the site. As noted above, there is already a range of food and non-food products on offer at Riverway, as well as a large anchor superstore (food and non-food) and several other long-established convenience type retailers within the second phase of the development. The mix of tenants in the retail park is affected by many economic factors, and in order to remain viable, there have been planning applications made over the years to relax the implications of the 'non-food' limitation that was applied to the first phase in 1988. This change has included the introduction of food retailers and comparison goods retailers within the phase 1 area, the effect of which has increased footfall between Rivergate and Riverway.

The Council's overall policy intention is to safeguard town centres from adverse effects caused by out-of-centre retail developments in line with the 'town centre first' principle. As such, it is considered that Riverway has, for some considerable time, functioned as an extension of Irvine town centre and that it offers a range of goods from a modern format that is complementary to the older parts of the centre. As retail patterns continue to evolve and change in response to a variety of new pressures which were not envisaged twenty or thirty years ago, it is considered that the 1997 condition which limits the second phase of Riverway to comparison only is no longer relevant. The application would also regularise the situation with respect to several tenants who have operated for many years as convenience stores.

Therefore, in applying the Circular 4/1998 tests for conditions to the current proposal, it is considered that the 1997 condition is no longer needed, relevant, precise nor reasonable. The Council has granted every application for relaxing planning conditions on an individual unit basis in the first phase of units at Riverway, introducing food retailers as well as comparison retailers, and concluded this process in 2018 by lifting the restriction to all units in phase 1. Given that both development phases at Riverway are directly adjacent, and function as a single retail park, there is little, if any, land use planning rationale for continuing to operate what is now an historic restriction on the units in the second phase.

The relaxation on the historic restrictions on the second phase at Riverway would enable occupiers to move more freely into the most appropriate unit for their operation, thus providing the owners of the park a more rational basis to organise tenants based on footfall patterns or unit size rather than simply the availability of an unexpected vacancy. This option is demonstrated in the current proposal through the relocation of Home Bargains into a larger unit, to include the ongoing operation of the external garden centre. Home Bargains would thus create a new anchor tenant at the south end of the main group of units, with a focus on convenience retailing which has a higher turnover and greater footfall in comparison with Homebase. The relocation of Home Bargains would also free-up a smaller unit in Phase 1 for another tenant. As with the relaxation at phase 1 which came into effect last year, it is considered that providing such flexibility within Riverway Retail Park would be in the interests of its long term viability without harming the wider town centre of Irvine.

In summary, the proposal for non-compliance with condition 2 of the 1997 outline planning permission is considered acceptable in terms of Policy TC 3.

In terms of the General Policy, criteria (b) and (d) are relevant.

In terms of (b), the proposal is satisfactory in that the proposed removal of condition 2 would have no adverse impact on the amenity of the area. The proposal also has the potential to add positively to the vitality and viability of the wider town centre by attracting a wider range of tenants into both phases of the retail park.

In terms of (d), there would no additional floor space created as a result of the proposed relaxation to condition 2. As such, there would not be any significant impact in terms of traffic generation and the availability of parking spaces. The owner of the retail park has placed a time limit on car parking which ensures that there is a turnover of spaces throughout the day. In addition, the nature of the retail park is such that customers will typically spend a relatively short part of the day there. It is not anticipated that this pattern of use would change through the removal of a planning condition dating from 1997.

In terms of the proposed Local Development Plan (LDP2), which is a material planning consideration, it is noted that the policy framework in relation to the status of Riverway Retail Park as a commercial centre at the edge of Irvine town centre remains similar.

There are no other material considerations. Accordingly, it is considered that planning permission could be granted, meaning that the restrictive effects of condition 2 from the 1997 outline planning permission would no longer apply. This would accord with the provisions of the current and emerging LDP.

4. Full Recommendation

Approved with no Conditions

Russell McCutcheon
Executive Director (Place)

For further information please contact Mr A Hume Planning Officer on 01294 324318.

Appendix 1 – Location Plan

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